

ORIGINALFILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

United States District Court
 for the
DISTRICT OF HAWAII

JAN 18 2006

at 10 o'clock and 8 min. M
 SUE BEITIA, CLERK

**Request for Modifying the Conditions or Term of Supervision
 with Consent of the Offender**
(Probation Form 49, Waiver of Hearing is Attached)

Name of Offender: RUDY K. SOUZA

Case Number: CR 02-00549HG-01

Name of Sentencing Judicial Officer: The Honorable Helen Gillmor
 Chief U.S. District Judge

Date of Original Sentence: 7/30/2003

Original Offense: Possession of an Unregistered Destructive Device, in violation of
 26 U.S.C. § 5861(d), a Class C felonyOriginal Sentence: Thirty (30) months imprisonment and three (3) years supervised
 release with the following special conditions: 1) That the defendant
 is prohibited from possessing any illegal or dangerous weapons;
 2) That the defendant participate in a mental health program at the
 discretion and direction of the Probation Office; 3) That the
 defendant participate in a substance abuse program, which may
 include drug testing at the discretion and direction of the Probation
 Office; and 4) That the defendant shall submit his person,
 residence, place of employment, or vehicle to a search conducted
 by the U.S. Probation Office at a reasonable time and in a
 reasonable manner, based upon reasonable suspicion of
 contraband or evidence of a violation of a condition of supervision.
 Failure to submit to a search may be grounds for revocation. The
 defendant shall warn any other resident that the premises may be
 subject to search pursuant to this condition.Modified
 Sentence: On 6/7/2005, Your Honor modified the conditions of supervision
 based on the subject's use of methamphetamine and refusal to
 comply with drug testing. The following sanction was ordered:
 5) That the defendant perform 50 hours of community service as
 directed by the Probation Office.

Type of Supervision: Supervised Release Date Supervision Commenced: 2/17/2005

PETITIONING THE COURT

[X] To modify the conditions of supervision as follows:

General Condition: That the defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of the commencement of supervision and at least two drug tests thereafter but no more than eight valid drug tests per month during the term of supervision (mandatory condition).

Special Condition No. 3: That the defendant shall participate and comply with substance abuse treatment which includes drug and alcohol testing. The defendant is to refrain from the possession and/or use of alcohol while participating in substance abuse treatment.

CAUSE

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
Special Condition No. 3	The subject refused to comply with drug testing on 7/15/2005, 7/22/2005, 11/17/2005, 12/15/2005, and 12/29/2005.

On 6/6/2005, Your Honor was informed that the subject's urine specimens of 5/2/2005 and 5/5/2005 tested positive for methamphetamine and that he refused to comply with drug testing on 4/15/2005 and 5/25/2005. As a sanction, the Court imposed an additional special condition that he perform 50 hours of community service as directed by the Probation Office.

The subject is presently enrolled in drug testing at Hina Mauka. The subject successfully completed the counseling portion of the Hina Mauka treatment program in September 2005. With respect to drug testing, the subject is required to call a telephone message recorder daily to obtain instructions for submitting a urine specimen to Hina Mauka the following day. Hina Mauka informed our office that on 7/15/2005, 7/22/2005, 11/17/2005, 12/15/2005, and 12/29/2005, the subject failed to report for drug testing. As the subject was oriented to the requirements of the drug testing program, he is charged with refusal to comply with drug testing.

When confronted following each of these violations, the subject stated that he simply forgot to call Hina Mauka. The subject claimed that he has a problem remembering appointments and thus forgets to call Hina Mauka daily. He was counseled about setting in place a reminder system to help him in the future. In support

of his statements, the subject's irresponsible behaviors and forgetfulness were noted by Dr. Kevin Connors while working with the subject in mental health counseling. Dr. Connors does not view the subject's behavior as malicious or arrogant in nature but rather a lack of concentration and attentiveness on the subject's part.

The subject was verbally reprimanded for his failure to attend drug testing. Because our office does not suspect the subject has resumed his use of illicit drugs, no further adverse action is recommended at this time. To his credit, the subject presently maintains gainful employment as a painter for a carpentry and restoration company. His employer speaks very highly of him and states that the subject's job is very demanding. Additionally, the subject maintains a good rapport with this officer.

In light of U.S. vs. Stephens, we are requesting that the Court modify the mandatory drug testing condition (General Condition) to allow for additional random drug testing. We are also requesting that Special Condition No. 3 be revised to include updated language. Our office believes that due to the subject's history of methamphetamine use and failure to comply with drug testing, it is prudent to randomly test the subject for illicit drug use until the expiration of supervision.

Attached is a signed Waiver of Hearing to Modify Conditions of Supervised Release. The subject waives his right to a hearing and to assistance of counsel. The subject agrees to the modification of the conditions of supervised release. The subject's attorney and the U.S. Attorney's Office have been notified of the proposed changes.

Respectfully submitted by,



FRANK M. CONDEOLLO, II
U.S. Probation Officer

Approved by:



TIMOTHY M. JENKINS
Supervising U.S. Probation Officer

Date: 1/11/2006

THE COURT ORDERS:

[X] The Modification of Conditions as Noted Above
[] Other



HELEN GILLMOR
Chief U.S. District Judge

1-13-06

Date

RECEIVED
U.S. PROBATION OFFICE
HONOLULU, HAWAII
16 JUN 17 2006
PJM/4

PROB 49
(5/96)

United States District Court

District of Hawaii

Waiver of Hearing to Modify Conditions of Probation/Supervised Release and/or Extend Term of Supervision

I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release and/or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.

I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release and/or to the proposed extension of my term of supervision:

[X] To modify the conditions of supervision as follows:

General Condition:

That the defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of the commencement of supervision and at least two drug tests thereafter but no more than eight valid drug tests per month during the term of supervision (mandatory condition).

Special Condition No. 3:

That the defendant shall participate and comply with substance abuse treatment which includes drug and alcohol testing. The defendant is to refrain from the possession and/or use of alcohol while participating in substance abuse treatment.

Witness:


FRANK M. CONDEOLLO, II
U.S. Probation Officer

Signed:


RUDY K. SOUZA
Supervised Releasee

11/23/05

Date